IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1585 OF 2005,

Jayaram Murlidhar Gangwani ...Appellant

vs.

Chief Officer,
Tasgaon Nagar Parishad,Tasgaon ...Respondent

WITH
SECOND APPEAL NO.1575 OF 2005,

Hamjekhan Gulab Aattar ...Appellant

vs.

Chief Officer,
Tasgaon Nagar Parishad,Tasgaon ...Respondent

WITH
SECOND APPEAL NO.1594 OF 2005

Anil Pandurang Patil ...Appellant

vs.

Chief Officer,
Tasgaon Nagar Parishad,Tasgaon ...Respondent

Mr.S.S.Patwardhan for the Appellant
Mr.Pratap Patil for the Respondent

CORAM: A.S.OKA, J.
DATED: MAY 4, 2006.

P.C.:

1. Heard Advocates for the parties. The facts of these Appeals are more or less identical. Therefore, a reference is made only to the facts of the case in Second Appeal No.1585 of 2005.

2. The Appellant claims to be a monthly tenant of the Respondent Municipal Council in respect of a shop. According to the case of the Appellant who is the original Plaintiff,

he is in possession of the said shop for last more than 7 years and in fact a lease was granted in favour of the Appellant by the Tasgaon Municipal Council. It is the case of the Appellant-Plaintiff that the Respondent-Council extended the lease till 28th February 1993. After the extended period of lease was over, the Respondent-Council claimed vacant possession of the suit shop from the Appellant by a notice dated 23rd April 1993. On the apprehension that he will be dispossessed without following procedure of law, the Appellant filed a suit for perpetual injunction.

3. The Trial Court dismissed the suit on the ground that the Civil Court had no jurisdiction to entertain and try the suit in view of provisions of the Maharashtra Municipal Councils,
Nagar Panchayats and Industrial Townships Act, 1965. An Appeal was preferred by the Appellant to the District Court. The District Court also confirmed the finding of the Trial Court as regards issue of jurisdiction. The Appellate Court held that the Appellant had come to the Civil Court on the basis of a resolution passed by the Respondent-Municipal Council. The Appellate Court held that the resolution can be challenged only before the Collector and thereafter before the Government and the Civil court could not have entertained the suit. The Appellate Court also noted the submissions made by the Appellant that the Municipal Council has passed another resolution and has decided to give the suit premises on lease to the Appellant. However, the Appeal was dismissed on the ground that the Civil Court has no jurisdiction.

4. Shri Patwardhan appearing for the Appellant in all these Appeals submitted that the findings recorded by the Courts below on the issue of jurisdiction are clearly illegal. He submitted that on the basis of subsequent resolution passed by the Municipal Council, the Appellant deserve to be protected.

5. Shri Patil for the Respondent supported the findings recorded by the Courts below. He submitted that the so far as the subsequent resolution is concerned, the Appellant has not complied with the conditions incorporated in the resolution regarding deposit of arrears of compensation and therefore, permission is not granted by the Director of Municipal Administration to implement the said resolution. He, however, on instructions stated that the Appellants in these Appeals will not be dispossessed otherwise than by following due process of law.

6. I have considered the submissions. The suit was essentially filed as the Appellants apprehended that they will be dispossessed without following due process of law on the basis of the notice issued by the Respondent. Shri Patil for the Respondent on instructions has stated that the Appellants will not dispossessed otherwise than by following due process of law. The statement is accepted. In view of this statement, the apprehension of the Appellants regarding their dispossession without following due process of law does not survive. There is no finding recorded by the Courts

below on the merits of the case made out by the Appellants as well as by the Respondent. As and when appropriate proceedings are taken out by the Respondent for dispossessing the Appellants, all contentions can be raised by both the parties.

7. Hence, it is not necessary to entertain the Appeals.

8. The Appeals are disposed of by recording the statement by the learned Advocate for the Respondent that the Appellants will not be dispossessed otherwise than by following due process of law in respect of the premises in dispute.

Judge.